

RECORDATION NO. 15075 Filed & Recorded
OCT 16 1986 10-05 AM

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ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD

ROBERT W. ALVORD
CARL C. DAVIS
CHARLES T. KAPPLER
JOHN H. DOYLE
GEORGE JOHN KETO
MILTON C. GRACE
JAMES C. MARTIN, JR.

LAW OFFICES
200 WORLD CENTER BUILDING
918 SIXTEENTH STREET, N.W.

WASHINGTON, D.C.

20006-2973

RECORDATION NO. 15075 Filed & Recorded
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*NOT A MEMBER OF D.C. BAR
*ALSO ADMITTED IN NEW YORK
*ALSO ADMITTED IN OHIO
*ALSO ADMITTED IN MARYLAND

RECORDATION NO. 15075 Filed & Recorded
OCT 16 1986 10-05 AM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION
October 16, 1986

OF COUNSEL
JESS LARSON
JOHN L. INGOLDSBY
URBAN A. LESTER

CABLE ADDRESS
"ALVORD"

TELEPHONE
AREA CODE 202
393-2266

TELEX
440367 A AND A

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C.

6-289A031

Date OCT 16 1986

Fee \$

Dear Ms. McGee:

ICC Washington, D.C.

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of September 1, 1986 between ACF Industries, Incorporated, as Builder, The Connecticut Bank and Trust Company, National Association, as Agent, and BarclaysAmerican/Leasing, Inc., as Buyer (Primary Document); and

(b) Assignment of Conditional Sale Indebtedness dated as of September 1, 1986 among ACF Industries, Incorporated, as Builder, The Connecticut Bank and Trust Company, National Association, as Agent, and BarclaysAmerican/Leasing, Inc., as Buyer (Secondary Document).

2. (a) Lease of Railroad Equipment dated as of September 1, 1986 between BarclaysAmerican/Leasing, Inc., as Lessor, and Soltex Polymer Corporation, as Lessee (Primary Document); and

(b) Assignment of Lease and Agreement dated as of September 1, 1986 between BarclaysAmerican/Leasing, Inc., as Lessor, and The Connecticut Bank and Trust Company, National Association, as Agent (Secondary Document).

NEW NO.

- A

- B

- C

NOTICE OF UNIT

OCT 16 9 59 AM '86

7:00 PM '86

① Overlapped CT Kappler

The names and addresses of the parties to the foregoing documents are:

1. Agent:

The Connecticut Bank and Trust
Company, National Association
One Constitution Plaza
Hartford, Connecticut 06115

2. Buyer-Lessor:

BarclaysAmerican/Leasing, Inc.
201 South Tryon Street
Charlotte, North Carolina 28231

3. Builder-Seller:

ACF Industries, Incorporated
3301 Rider Trail South
Earth City, Missouri 63045

4. Lessee:

Soltex Polymer Corporation
3333 Richmond Avenue
Houston, Texas 77098

A description of the railroad equipment covered by the enclosed documents is:

Two hundred seventy-two (272) new ACF Model 5711, 5800 CUFT, center flow, covered hopper cars bearing reporting marks and numbers ELTX 1100 through ELTX 1371, both inclusive.


Also enclosed is a check in the amount of \$20 payable to the order of the Interstate Commerce Commission covering the required recordation fees.

Kindly return the stamped counterparts of the enclosed documents not needed for your official files to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

A short summary of the enclosed primary and secondary documents to appear in the Commission's Index is:

Conditional Sale Agreement, Assignment of Conditional Indebtedness, Lease of Railroad Equipment and Assignment of Lease and Agreement, each dated as of September 1, 1986, covering two hundred seventy-two (272) covered hopper cars identified by marks and numbers ELTX 1100 through ELTX 1371, both inclusive.

Very truly yours,


Charles T. Kappler

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

10/16/86

Charles T. Kappler
Alvord & Alvord
918 16th St. N.W.
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/16/86 at 10:05am, and assigned re-recording number(s) 15075, 15075-A, 15075-B & 15075-C

Sincerely yours,

Norita R. McGee
Secretary

Enclosure(s)

RECORDATION NO. 15075 ¹⁸ Filed & Recorded

OCT 16 1986 10-05 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF CONDITIONAL SALE INDEBTEDNESS

among

ACF INDUSTRIES, INC.,

as Builder,

THE CONNECTICUT BANK AND TRUST
COMPANY, NATIONAL ASSOCIATION,

as Agent,

and

BARCLAYSAMERICAN/LEASING, INC.,

as Buyer

Dated as of September 1, 1986

ASSIGNMENT OF CONDITIONAL SALE INDEBTEDNESS,
dated as of September 1, 1986, among ACF INDUSTRIES, INC.
(the "Builder"), a New Jersey corporation, THE CONNECTI-
CUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, as
agent (the "Agent"), and BARCLAYSAMERICAN/LEASING, INC.
(the "Buyer") a North Carolina corporation.

RECITALS

A. The Builder, as Seller thereunder, and the Buyer have entered into a Conditional Sale Agreement, dated as of the date hereof (the "Conditional Sale Agreement") (capitalized terms used herein without other definition being used as defined therein), covering the construction, sale and delivery, on the conditions therein set forth, by the Seller and the purchase by the Buyer of the Equipment.

B. The Buyer, as Lessor thereunder, and Soltex Polymer Corporation (the "Lessee") have entered into a Lease of Railroad Equipment, dated as of the date hereof (the "Lease"), providing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, in consideration of the payments herein referred to, the receipt of which is hereby acknowledged by the Builder, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Assignment. The Builder hereby assigns, transfers and sets over unto the Agent, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each Unit of the Equipment;

(b) all the right, title and interest of the Builder in, to and under the Conditional Sale Agreement and the Conditional Sale Indebtedness and in and to any and all other amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement (except the right to receive the Down Payment for Units delivered at any Equipment Closing); and

(c) except as limited by subdivision (b) of this Section 1, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without, in each case any recourse against the Builder for or on account of the failure of the Buyer to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, provided that this Assignment shall not subject the Agent to, or transfer, or in any way affect or modify, the obligations of the Builder under the Conditional Sale Agreement, including, without limitation, the obligation to construct and to deliver the Equipment to be sold by it in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Section 15 of the Conditional Sale Agreement or relieve the Buyer from its obligations to the Builder contained in the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 16 of the Conditional Sale Agreement, all obligations of the Builder to the Buyer with respect to the Conditional Sale Agreement and the Equipment shall be and remain enforceable by the Buyer, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Agent in the Agent's own name, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Agent is or may become entitled under this Assignment and compliance by the Buyer with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Agent and the Lenders.

Section 2. Conditions Precedent. The Agent, on each Equipment Closing Date as provided in Section 3 of the Conditional Sale Agreement shall pay to the Builder an amount equal to the Conditional Sale Indebtedness, as provided in Section 4.1(a) of the Conditional Sale Agreement, with respect to the Units delivered on such Equipment Closing Date; provided, however, that the obligation of the Agent hereunder to make such payment is hereby expressly conditioned upon the Agent's having on deposit, pursuant to the terms of the Participation

Agreement, sufficient funds available to make such payment, upon payment by the Buyer, as provided in Section 4.1(b) of the Conditional Sale Agreement, of the Down Payment with respect to the Units delivered on such Equipment Closing Date, and upon receipt by the Buyer of the documents and instruments required to be delivered, pursuant to Section 5 of the Conditional Sale Agreement, on such Equipment Closing Date and an Officer's Certificate of the Builder certifying that the representations and warranties of the Builder set forth in Section 3 are true and correct on and as of such Equipment Closing Date with the same effect as if made on and as of such date. In the event that the Agent, shall not make any such payment, the Agent shall re-assign to the Builder, without recourse to the Agent, all right, title and interest and the Agent in and to the Units with respect to which payment has not been made to the Agent.

Section 3. Representation and Warranties of Builder. The Builder represents and warrants to the Buyer and the Agent as follows:

(a) The Builder had, upon the delivery of any Units under the Conditional Sale Agreement, legal title to such Units and good and lawful right to sell such Units to the Buyer and such title was free of all Liens of any nature except the rights created under the Conditional Sale Agreement, the Lease and this Assignment.

(b) The Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery thereof by the Buyer, constitutes a legal, valid and binding obligation of the Builder enforceable against the Builder in accordance with its terms.

(c) The Conditional Sale Agreement is in full force and effect without any amendment, modification or waiver.

(d) The Builder has not assigned or pledged the whole or any part of the rights assigned hereby to anyone other than the Agent. Prior to the assignment contained in Section 2 hereof, the Builder had legal title in and to the Conditional Sale Indebtedness, free of all Liens of any nature.

Section 4. Builder's Agreements. The Builder agrees for the benefit of the Agent that it (a) will fully conform and comply except as provided in this Assignment with each of and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Seller, (b) will warrant and defend title to the Units of the Equipment delivered by it to the Buyer on any Equipment Closing Date against the demands of all persons based on or arising out of any event or condition occurring or existing prior to the delivery of such Units under the Conditional Sale Agreement and against any failure or alleged failure of the Builder to transfer full title to such Units to the Buyer, free and clear of all Liens except the rights created under the Conditional Sale Agreement, the Lease and this Assignment, and (c) will warrant and defend the title of the Agent in and to the Conditional Sale Indebtedness against the demands of all persons based on or arising out of any event or condition occurring or existing prior to the delivery of the Units on any Equipment Closing Date and the payment by the Agent of the amounts referred to in Section 2 of this Assignment and the Builder will indemnify, protect and hold harmless the Agent from and against all expenses (including reasonable attorneys' fees, disbursements and expenses), loss or damage suffered by reason of any of such demands referred to in clause (b) or (c) of this Section 4. The Builder agrees that any amounts payable to it by the Buyer or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Agent, shall not be secured by any Lien, charge or security interest upon the Equipment or any Unit thereof.

Section 5. Builder's Indemnities. In the event of any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any installment of, or interest on, the Conditional Sale Indebtedness or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Agent from and against all expenses (including reasonable attorneys' fees, disbursements and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Buyer or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff,

counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyer or the Lessee by the Builder.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, disbursements and expenses, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formulae, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Agent will give prompt notice to the Builder of any claim actually known to the Agent which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim.

Section 6. Further Assignment by Agent. The Agent may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Buyer thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Section 16.2 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

Section 7. Further Assurances. The Builder will from time to time, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be, and upon any request of the Agent, its successors and assigns, the Builder will execute any and all instruments which may then be necessary or proper in

order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

Section 8. Buyer's Consent. The Buyer consents to all of the terms and conditions of this Assignment and agrees that (a) it will pay or cause to be paid all amounts payable by it under the Conditional Sale Agreement except amounts payable to the Builder under clause (b) of Section 4.1 thereof in immediately available funds by 11:00 A.M., New York time, on the date due to The Connecticut Bank and Trust Company, National Association, as Agent, at One Constitution Plaza, Hartford, Connecticut 06115, Attention: Corporate Trust Department (or at such other address as may be furnished to the Buyer by the Agent); (b) the Agent shall be entitled to all the rights, remedies and privileges of the Seller and shall be entitled to the benefits of, and to receive and enforce performance of, all of the representations, warranties, indemnities, agreements and covenants of the Buyer under the Conditional Sale Agreement as though the Agent were named therein as the Seller originally; (c) the Buyer will not assert against the Agent any claim or defense which the Buyer may now or hereafter have against the Builder; (d) the Agent shall not, by virtue of this Assignment, be or become subject to any liability or obligation under the Conditional Sale Agreement (except for the performance of the Agreements of the Seller, which are assigned to and within the control of the Agent, set forth in Sections 7, 9.2(b) and 9.2(c) thereof) and the rights of the Agent to the entire Conditional Sale Indebtedness, as well as any other rights assigned hereunder, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the construction, deliver or warranty thereof, or with respect to any indemnity contained in the Conditional Sale Agreement, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyer or the Lessee by the Builder; (e) the Conditional Sale Agreement shall not, without the prior written consent of the Agent, be amended, terminated or modified, nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Conditional Sale Agreement or this Assignment or of any of the rights created by any thereof; (f) the

security interest assigned, transferred and set over hereby shall, in addition to the payments and performance secured in the Conditional Sale Agreement, secure as well the performance by the Buyer of all of its obligations and agreements contained in, and the payment of all amounts payable to the Agent or the Lenders pursuant to, the Participation Agreement and each of its other Basic Agreements; and (g) the Buyer shall not assert against the Builder any claim under Section 7, 9.2(b) or 9.2(c) of the Conditional Sale Agreement.


Section 9. Governing Law. This Assignment is being made and delivered in, and shall be governed by and construed in accordance with the laws of, the State of New York.

Section 10. Counterparts. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed before the undersigned witnesses in their respective corporate names by duly authorized officials and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

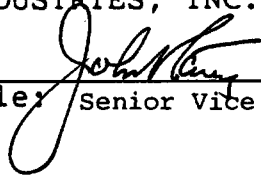
[Seal]

Attest:


Secretary

ACF INDUSTRIES, INC.

By


Title: Senior Vice President

[Seal]

Attest:

THE CONNECTICUT BANK AND TRUST
COMPANY, NATIONAL ASSOCIATION,
as Agent

By

Title:

[Seal]

Attest:

BARCLAYSAMERICAN/LEASING, INC.

By

Title:

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed before the undersigned witnesses in their respective corporate names by duly authorized officials and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

[Seal]

ACF INDUSTRIES, INC.

Attest:

By

Title: _____

[Seal]

THE CONNECTICUT BANK AND TRUST
COMPANY, NATIONAL ASSOCIATION,
as Agent

Attest:

Shirley M. Merrill

By

Title: **VICE PRESIDENT**

[Seal]

BARCLAYSAMERICAN/LEASING, INC.

Attest:

By

Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed before the undersigned witnesses in their respective corporate names by duly authorized officials and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

[Seal]

ACF INDUSTRIES, INC.

Attest:

By _____

Title: _____

[Seal]

THE CONNECTICUT BANK AND TRUST
COMPANY, NATIONAL ASSOCIATION,
as Agent

Attest:

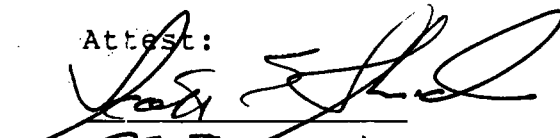
By _____

Title: _____

[Seal]

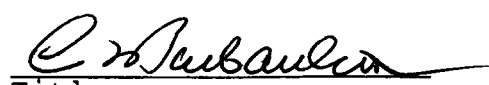
BARCLAYSAMERICAN/LEASING, INC.

Attest:



attest.

By 

Title: 

sup

STATE OF)
MISSOURI : SS.:
COUNTY OF)
ST. CHARLES

On the 1st day of October, in the year 1986, before me personally came John F. McCarthy, to me known, who being by me duly sworn, did depose and say that he resides at 3301 Rider Trail So., that he is Senior Vice President of ACF Industries, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

W. MARINETA ZIMMERMAN
NOTARY PUBLIC STATE OF MISSOURI
ST. CHARLES COUNTY
MY COMMISSION EXP. APR. 7, 1990
ISSUED THRU MISSOURI NOTARY ASSOC.

W. Marineta Zimmerman
Notary Public

[NOTARIAL SEAL]

STATE OF)
COUNTY OF) : SS.:

On the _____ day of _____, in the year 19____, before me personally came _____, to me known, who being by me duly sworn, did depose and say that he resides at _____, that he is _____ of The Connecticut Bank and Trust Company, National Association, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

[NOTARIAL SEAL]

STATE OF)
 : SS.:
COUNTY OF)

On the day of , in the year
19 , before me personally came , to me
known, who being by me duly sworn, did depose and say
that he resides at , that he is
 of ACF Industries, Inc., the corporation
described in and which executed the above instrument;
that he knows the seal of said corporation; that one of
the seals affixed to said instrument is such corporate
seal; that it was so affixed by order of the Board of
Directors of said corporation, and that he signed his
name thereto by like order.

Notary Public

[NOTARIAL SEAL]

STATE OF ~~CONNECTICUT~~
 : SS.:
COUNTY OF ~~HARTFORD~~)

On the 1st day of October, in the year
1980, before me personally came Mason M. Lemont, to me
known, who being by me duly sworn, did depose and say
that he resides at BOLTON, CT, that he is
VICE PRESIDENT of The Connecticut Bank and Trust Company,
National Association, the corporation described in and
which executed the above instrument; that he knows the
seal of said corporation; that one of the seals affixed
to said instrument is such corporate seal; that it was so
affixed by order of the Board of Directors of said cor-
poration, and that he signed his name thereto by like
order.

Rosemary Barry
Notary Public

[NOTARIAL SEAL]

ROSEMARY BARRY
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1991

STATE OF)
North Carolina : ss.:
COUNTY OF)
Mecklenburg

On the 2nd day of October , in the year 1986, before me personally came C. L. Burbank, III , to me known, who being by me duly sworn, did depose and say that he resides at Charlotte, N.C. , that he is Sr. V.P. of BarclaysAmerican/Leasing, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.


Notary Public

My commission expires: 9-6-91

[NOTARIAL SEAL]